Accused 1 and 2 were released on Bail as per order of this Court dated 6.7.2004 and made in Crl.M.P.No.6669/04 in C.A.753/04.

Accused 3 and 4 were released on bail as per order of this Court dated 27.9.2004 and made in Crl.M.P.No.9589/04 in C.A.753/04.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 22.09.2006

CORAM

THE HONOURABLE MR. JUSTICE F.M.IBRAHIM KALIFULLA
AND
THE HONOURABLE MR. JUSTICE M.CHOCKALINGAM

CRL. APPEAL NO. 753 OF 2004

1. Gopi
2. Maran @ Manimaran
3. Mathi
4. Kalai Arasu .. Appellants/ Accused 1 to 4

- Vs -

State rep. by
Sub-Inspector of Police
R-1 Mambalam Police Station
Chennai. .. Respondent / Complainant

Criminal Appeal filed under Section 374 of Criminal Procedure code against the conviction and sentence passed by the learned Addl. District & Sessions Judge, (Fast Track Court No.II), Chennai, in S.C. No.613 of 2003 dated 8.4.04 as stated therein.

For Appellants : Mr. S.Ashok Kumar, SC, for
Mr. A.Sasidharan

For Respondent : Mr. P.Kumaresan, APP

JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY
F.M.IBRAHIM KALIFULLA, J.)

The appellants, four in number, were tried along with one other accused, A-5 in S.C. No.613/03 on the file of the Addl. Court of Sessions (Fast Track Court No.2), Chennai. A-1 to A-5 were charged under Section 120-B IPC; A-1 to A-4 were charged under Section 341 IPC; A-1 to A-4 were charged under Section 302 IPC and A-5 was charged under Section 302 read with 109 IPC. The trial court found A-1 to A-4 alone guilty under Sections 341 and 302 IPC

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for which they were sentenced to one month rigorous imprisonment for the former offence and life imprisonment for the latter with a fine of Rs.1,000/= carrying a default sentence of three months rigorous imprisonment. A-1 to A-5 were acquitted under Section 120-B IPC and A-5 was also acquitted under Section 302 read with 109 IPC. Hence, the appellants, A-1 to A-4, are before this Court in this appeal, challenging their conviction and sentence.

2. The short facts necessary for the disposal of this appeal could be stated thus :-

On 13.9.02 when P.W.1 along with the deceased, Pachaiappan were returning from Nallankuppam, they were waylaid by A-1 to A-4 and A-1 attacked the deceased with a boulder; A-2 attacked the deceased with a Jallikarandi while A-3 and A-4 attacked the deceased with knife and aruval on his neck and hip. In the course of the said transaction, the deceased sustained injuries and fell down. Thereafter, the accused ran away from the scene of occurrence. The deceased was taken to the hospital by P.W.1 and he was declared dead by the doctor on his arrival at the hospital. Thereafter, P.W.1 went to the police station and lodged the complaint, Ex.P-1 with P.W.14, the Inspector of Police at 2300 hours, which was registered as a case in crime No.1606/02 under Section 302 IPC. Ex.P-15 is the printed first information report. The express records were sent to court and also to the higher officials.

3. P.W.14, on the complaint, Ex.P-1, took up investigation. He proceeded to the scene of occurrence and reached the place at 2340 hours. He observed the scene of occurrence and prepared the observation mahazar, Ex.P-16 and drew the rough sketch, Ex.P-17. He examined witnesses and recorded their statements. Thereafter, from the scene of occurrence, he recovered bloodstained cement flooring, M.O.11, sample cement flooring, M.O.10 and a casurina stick, M.O.1 in the presence of witnesses under a mahazar, Ex.P-18. Thereafter, between 6.00 a.m. and 9.00 a.m. on 14.9.02, at the mortuary at the Royapettah Government Hospital, P.W.14 conducted inquest over the dead body of the deceased in the presence of witnesses and prepared the inquest report, Ex.P-19. He also caused photographs of the scene of occurrence and the dead body to be taken. Thereafter, he gave a requisition to the doctor and sent the dead body along with P.W.11, the head constable for conducting post-mortem.

4. On receipt of Ex.P-13, the requisition to conduct post-mortem, P.W.13, Tutor and Asst. Professor in Forensic Medicine, Government Royapettah Hospital, conducted autopsy on the dead body of the deceased and found the following injuries :-

"Injuries :
Contused Abrasions :
1) 3 x 2 cms over left side of forehead.
2) 4 x 3 cms over right shoulder.
3) 6 x 2.5 cms over back of lower 3rd of right arm.
4) 4 x 1 cms over left shoulder.
5) Oblique chop injury over right side of forehead, right ear and adjacent right side of head measuring 28 x 2 to 4 cm x cavity cavity deep with severing

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of the right side of frontal, right temporal and right side of occipital bones, right ear and meninges exposing the incised brain tissue.

6) Transverse chop injury over right side of forehead outer 1/3 rd of right eyebrow, face, right ear and adjacent right side of head 2 cms below the inner 1/5th of injury No.5 and merging with the injury No.5 with its outer 4/5th measuring 22 x 2 to 3 cms x cavity deep.

7) Oblique copy injury 10 x 4 cms x cavity deep over right side of face with severing of the lower end of right ear, right cheek, ramus of right mandible and the deeper structures of that region exposing the oral cavity and the severed deeper structures of right side of face and adjacent right mastoid.

8) Transverse superficial incised would 4 x 0.8 x 0.8 cms over right side of head 4 cms above injury No5.

9) An oblique superficial incised wound over right side and adjacent back of head measuring 7 x 0.5 x 0.5 cms located 6.8 cms above the outer 3rd of injury No.5.

10) Laceration 4 x 3 cms x cavity d3eep involving the left eye and adjacent lower part of left orbit with bruising and laceration of the deeper tissues and laceration of the eye ball. Contents of eye ball could not be made out.

O/D of Head : Bruising of scalp 5 x 3 cms seen over left side of head. Bruising of scalp along the margins of injury Nos. 5, 6, 8 and 9. Full thickness cut fracture of the skull seen over right side of head corresponding to external injury Nos.5 and 6. Meninger seen incised exposing the underlying brain corresponding to external injury Nos.5 and 6. Cut injury seen along the outer aspect of right cerebral hemisphere corresponding to external injury Nos.5 and 6. Thin subdural and subarachnoid haemorrhage seen over either cerebral hemispheres. Fracture of facial skeleton seen involving ramus of right side of mandible and right orbit with severing of the deeper structures (carotid artery, internal jugular vein and nerves). Fracture of left orbit with severing of left eye ball made out (injury No.10)."

The doctor issued Ex.P-14, the post-mortem certificate opining that the deceased would appear to have died on account of shock and haemorrhage due to multiple injuries sustained by him.

5. P.W.14, in the meantime, continuing with his investigation, came to know that A-1 to A-4 had surrendered before the Judicial Magistrate No.I, Poonamallee on 17.9.02. He made a requisition for taking them into police custody and on the orders of the court, police custody was ordered and the appellants were taken into custody on 21.9.02 and they were examined. At that time A-1 gave a voluntary confession statement in the presence of witnesses, the

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admissible portion of which is Ex.P-20, pursuant to which a bloodstained shirt worn by him at the time of occurrence was recovered. A-1 also produced a Jallikarandi and the same was recovered under a mahazar, Ex.P-21. Similarly, on the same day, A-2 also gave a confession statement in the presence of witnesses, the admissible portion of which is Ex.P-22, pursuant to which from a bush near the railway line, A-2 produced an aruval, which was recovered under a mahazar, Ex.P-23, in the presence of P.W.8 and another. Likewise, A-3 also gave a confession statement, the admissible portion of which is Ex.P-24, pursuant to which an aruval with a wooden handle was recovered under a mahazar, Ex.P-25. A-4 also gave a confession statement, the admissible portion of which is Ex.P-26 pursuant to which another aruval with a wooden handle was recovered under a mahazar, Ex.P-27. Thereafter, the accused were sent to court for judicial remand on 23.9.02. The material objects were forwarded to the court with a requisition to send the same for chemical analysis. A-5 was arrested on 24.9.02 at 6.15 a.m. in the presence of a woman Sub-Inspector of Police in front of her house and she was also sent for judicial remand. The court, by sending the material objects for analysis received, Exs.P-28 and P-29, the serologist's report and chemical analysis report. P.W.14 examined other witnesses and also the doctor, P.W.13, who conducted post-mortem and recorded their statements. After completing the investigation, P.W.14 filed the final report against the accused on 14.1.03 under Sections 302, 341, 120-B and 109 IPC.

6. Thereafter, the case was committed to the Court of Sessions, necessary charges were framed and the case was tried by the trial court. In order to substantiate the charges, the prosecution examined fourteen witnesses and relied on twenty-nine exhibits and eleven material objects. After the evidence on the side of the prosecution was over, the court questioned the accused under Section 313 Cr.P.C. on the incriminating circumstances appearing against them. They denied all the circumstances as false. The defence neither broughtforth any oral nor documentary evidence. After hearing the arguments advanced by the counsel on either side and on scrutiny of the materials, the court was of the opinion that the prosecution has proved the case against A-1 to A-4 under Sections 341 and 302 IPC, while the trial court acquitted A-1 to A-5 under Section 120-B IPC and also acquitted A-5 under Sections 302 read with 109 IPC and imposed the punishment referred to above, which is being challenged in this appeal.

7. Assailing the conviction imposed on A-1 to A-4, Mr.S.Ashok Kumar, learned senior counsel appearing for the appellants would, at the outset, contend that though P.W.s 1 to 4 are alleged to have been examined as eye witnesses to the occurrence, having regard to the various discrepancies found in their evidence, it is highly unbelievable that any of them could have witnessed the incident. According to the learned senior counsel, even assuming P.W.1 had witnessed the incident, as putforth by the prosecution, having regard to the variations in his statement before the court below as well as his statement before the doctor, P.W.5, which is found in Ex.P-2, the accident register, it is highly unsafe to act upon such evidence to find the appellants guilty and, therefore, the appellants are entitled for an acquittal. We heard the learned

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Addl. Public Prosecutor, who fairly states that P.W.1 alone could be said to be an eye witness to the incident and even eschewing the evidence of P.W.s 2 to 4, learned Addl. Public Prosecutor contends that there is no reason to discredit the evidence of P.W.1.

8. The case of the prosecution is that the deceased Pachaiappan died on account of homicidal violence. It was not disputed before the trial court nor it is disputed before this Court. The prosecution, to establish that Pachaiappan, died on account of homicidal violence, examined P.W.13, the doctor, who issued Ex.P-14, the post-mortem certificate. In his evidence he has stated that he found the injuries which is found noted in Ex.P-14 and in his opinion the deceased would have died of shock and haemorrhage due to multiple injuries. On the medical evidence we hold that the deceased Pachaiappan died on account of homicidal violence.

9. Having regard to the arguments advanced by the learned senior counsel for the appellants and the learned Addl. Public Prosecutor appearing for the State and having given our anxious consideration to the various submissions as well as the materials placed before us, we find force in the submission advanced by the learned senior counsel as regards the reliance to be placed upon the version of P.W.s 1 to 4. On a perusal of the evidence of P.W.s 1 to 4, we find that P.W.2 certainly could not have witnessed the incident, as putforth by the prosecution, inasmuch as P.W.4 has categorically mentioned that he called P.W.2 and his elder brother after the deceased was found lying on the ground with bleeding injuries. Therefore, the presence of P.W.2 at the time of occurrence is not substantiated. Therefore, we are left with the evidence of P.W.1 alone and on an analysis of the evidence of P.W.1 we find that in his evidence, though he would state that each one of the accused used different weapons, namely, a boulder, a jallikarandi, a knife and an aruval and that they caused injuries on the deceased, the said evidence of P.W.1 falls to the ground, since a perusal of Ex.P-2, the accident register copy issued by P.W.5, which is the earliest document to come into existence, P.W.1 had disclosed at 10.15 p.m. on the day of the occurrence, that the deceased was attacked by three known persons with a sickle at 9.45 p.m. on 13.9.02. Such a variation in the number of assailants, who are said to have caused injuries on the deceased and the discrepancy in the weapons used by them, materially dislodge the case of the prosecution and in our considered opinion, such a material variation in the oral evidence of P.W.1 coupled with Ex.P-2, the accident register, which is the earliest document to come into existence, definitely renders the evidence of P.W.1 unreliable and untrustworthy and we hold no reliance at all could be placed on the evidence of P.W.1. Once, we disbelieve the evidence of P.W.1, then there is no other evidence to connect the appellants with the crime. The motive aspect as putforth by the prosecution does not even appeal to us as also the recoveries made at the instance of the appellants. Therefore, we are of the considered opinion that the conviction of the appellants cannot be sustained and they are entitled for an acquittal.

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10. In the result, the criminal appeal is allowed. The judgment of the trial court is set aside and the appellants are acquitted of all the charges framed against them. Fine amount, if already paid, is directed to be refunded to the appellants. It is reported that the appellants are on bail. Bail bonds executed by them shall stand cancelled.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

GLN

To

1) The XVII Metropolitan Magistrate, Saidapet, Chennai.
2) - Do - Thro' The Chief Metropolitan Magistrate, Egmore, Chennai - 8.
3) The Chief Judicial Magistrate, Salem.
4) The Addl. District & Sessions Judge (FTC No.2), Chennai.
5) - Do - Thro' The Principal Judge, City Civil Court, Chennai.
6) The District Collector, Chennai.
7) The Director General of Police, Chennai.
8) The Public Prosecutor, High Court, Madras.
9) The Superintendent of Central Prison, Chennai.
10) The Inspector of Police, R-1 Mambalam Police Station, Chennai.
11) The Station House Officer, Salem Town Police Station, Salem.

CRL. A. NO. 753 OF 2004

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